

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Pierre Colin, et al.	§	Group Art Unit: 2616
	§	
Serial No.: 10/675,363	§	
	§	Examiner: Ahmed, Salman
Filing Date: September 30, 2003	§	
	§	
Title: Computer Data Transport System and Method	§	Attorney Docket No. 11091
	§	

**MAIL STOP APPEAL BRIEF
- PATENTS**
Commissioner for Patents
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/Howard L. Speight/ Reg. No. 37,733
Howard L. Speight

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APPELLANT'S REPLY BRIEF (37 C.F.R. § 41.41)

This Reply Brief is submitted in response to the Examiner's Answer mailed on September 30, 2009.

ARGUMENT

- A. The Examiner's combination of Somekh and Rom does not teach elements (e) and (f) of independent claims 1, 9, and 17.**

The Examiner's Answer at 17-27 argues that the combination of Somekh and Rom teach the following elements of claim 1 (and corresponding elements of claims 9 and 17):

- (e) generating pause messages at the second gateway based at least in part on the reception of acknowledgement messages by the second gateway; and
- (f) transmitting the pause messages from the second gateway to the first gateway.

In particular, the Final Office Action and the Examiner's Answer argue that Somekh teaches everything in these two elements except "pause messages," which is taught by Rom.

Appellant disagrees with the Examiner's contention that Somekh teaches everything in elements (e) and (f) repeated above except "pause messages." The basic flaw in the Examiner's argument lies in the statement that "[t]he above message flow [i.e., the list of messages that appears below the reproduction of Fig. 9C on page 23 of the Examiner's Answer, which was created by the Examiner and is not copied from Somekh] applies to all the different circumstances described within paragraphs [0224]-[0236]." Examiner's Answer at 23. While the statement is partially true, it is misleading.

Fig. 9C depicts message flows for the three circumstances described in Appellant's Appeal Brief:

1. Circumstance 1 (described in Somekh [0226]) – occurs when "more than a predetermined time passes between the end of the connection establishment negotiation stage on network 34B and gateway 34B did not

yet receive packet 312.”

2. Circumstance 2 (described in Somekh [0228], not Somekh [0227] as mistakenly indicated in Appellant’s Appeal Brief) – occurs when “gateway 36B receives packet 312 before the connection establishment negotiation stage on network 34B is completed.”

3. Circumstance 3 (described in Somekh [0227]) – occurs when element 36B “finally receives” packet 312. Somekh [0227], lines 1-3. Appellant has coined a term for Circumstance 3 – i.e. “normal”– because it appears to describe normal communications.

Somekh’s “connection establishment negotiation stage” is a delimiting event in Circumstances 1 and 2 but is not involved in Circumstance 3. That is, in Circumstance 1, the end of the “connection establishment negotiation stage” is the beginning of a period of time that is measured against a “predetermined time” and in Circumstance 2, the “connection establishment negotiation stage” is the period of time in question. Circumstance 3 does not mention the “connection establishment negotiation stage.”

Somekh does not define explicitly what is meant by the term “connection establishment negotiation stage” but it may be the “connection establishment procedures” described in Somekh [0135]-[0136], that are the procedures used to establish the connection 30 shown in Somekh Fig. 1.

The Final Office Action equated Somekh's Gateway A (element 36A in Somekh's Fig. 9C) with the instant claims' first gateway and Somekh's Gateway B (element 36B in Somekh's Fig. 9C) with the instant claims' second gateway. In order for Somekh to teach elements (e) and (f) of Appellant's claim 1 (and corresponding elements of claims 9 and 17), Somekh would need to describe element 36B generating messages "based at least in part on the reception of acknowledgement messages" by element 36B (element (e)) and then transmitting those messages from element 36B to element 36A. In claim 1, the acknowledgement messages are "from the data destinations," which the Final Office Action equates with Modem B (element 32B) in Fig. 9C. *See* Final Office Action at 3 (comments regarding claim 1, element (d)); Examiner's Answer at 3 (comments regarding claim 1, element (d)).

In Circumstance 1, there is no discussion of a message from element 36B to element 36A. To the contrary, Somekh states that element 36B "does not transmit packets 318 [to element 36A] responsive to frames 316 [from element 32B]." Somekh [0226], lines 10-12. Thus, in Circumstance 1, Somekh does not teach elements (e) and (f) from the instant independent claims because Somekh does not teach transmitting messages from the second gateway to the first gateway (element (e)) where the messages are generated at the second gateway based least in part on the reception of acknowledgement messages by the second gateway (element (f)).

Thus, the instant claims are not obvious under 35 USC 103(a) in view of Somekh's Circumstance 1.

In Circumstance 2, there is a discussion of a message from element 36B to element 36A, Somekh [0228], lines 5-6 ("Gateway 36B reports the delay to gateway 36A"), but message is generated because the "connection establishment negotiation stage" is not complete, Somekh [0228], lines 1-6, and not "based at least in part on the reception of acknowledgement messages by the second gateway," as required by element (e) of the instant claims. Thus, the instant claims are not obvious under 35 USC 103(a) in view of Somekh's Circumstance 2.

In Circumstance 3, Somekh describes transmitting a packet from element 36B to element 36A, Somekh [0227], lines 3-6. However, unlike Circumstances 1 and 2 in which there is an argument, which Appellant does not concede, that Rom's Pause message from element 36B to element 36A would be useful (e.g., to await packet 312 in Circumstance 1 or to "stall the connection" in Circumstance 3, Somekh [0228], line 8), there is no need for a Pause message in Circumstance 3 because communications are proceeding normally. Thus, for Circumstance 3, the Examiner has not identified a reason to combine Somekh and Rom, as required by *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007)(when determining the obviousness under 35 USC 103(a) of a "combination of two known devices . . . it can be important to identify a reason that would have prompted a person of

ordinary skill in the relevant field to combine the elements in the way the claimed new invention does”). For this reason, the instant claims are not obvious in view of Somekh’s Circumstance 3.

Therefore, because Somekh does not teach all of requirements of elements (e) and (f) of the instant claims and because the Examiner does not argue that Rom teaches the missing elements, Appellant respectfully requests that the rejections of the pending claims be reversed.

B. Appellant has complied with 37 CFR 1.111(b) and 37 CFR 1.111(c)

The Examiner argued that Appellant’s arguments fail to comply with 37 CFR 1.111(b) and 37 CFR 1.111(c). Examiner’s Answer at 26-27. The Examiner’s arguments are conclusory and unjustified. Appellant has made a specific argument for patentability and therefore has not made “a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentable distinguishes them from the references,” and thus has complied with 37 CFR 1.111(b). *See* Appellant’s Appeal Brief and this Reply Brief. Further, Appellant has “clearly point[ed] out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made,” and thus has complied with 37 CFR 1.111(c). *See* Appellant’s Appeal Brief and this Reply Brief.

Appellant respectfully requests that this basis for sustaining the rejections of the pending claims be reversed.

SUMMARY

In light of the foregoing, Appellant respectfully requests that the final rejection of the pending claims be reversed and that the application be remanded for allowance of the pending claims, or, alternatively, that the application be remanded for further examination if appropriate references can be found by the examiner.

Appellant submits that no fee is due with the filing of this Reply Brief. Should any fees be required, Appellant requests that the fees be debited from deposit account number 50-4370.

Respectfully submitted,

/Howard L. Speight/

Howard L. Speight

Reg. No. 37,733

9601 Katy Freeway

Suite 280

Houston, Texas 77024

Telephone: (713) 881-9600

Facsimile: (713) 715-7384

E.Mail: howard@hspeight.com

ATTORNEY FOR APPELLANT

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